IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 405 of 2003

in

SPECIAL CIVIL APPLICATIONNo 3067 of 2003
with
CIVIL APPLICATION No. 2860 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIEF ENGINEER G.E.B.
Versus
MACKUR LABORATORIES LTD.

Appearance:
1. LETTERS PATENT APPEAL No. 405 of 2003
MR AD OZA for Appellant No.
NANAVATY ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and

MR.JUSTICE M.S.SHAH

Date of decision: 16/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

1. This appeal was admitted on 25.4.2003 and on Civil Application No.2860 of 2003, on interim stay, Rule was issued on the same day. When the Civil Application came up for hearing, at the request of learned Counsel appearing for the parties, we have taken up the appeal for final disposal and are accordingly disposing it of by this judgment.

2. The appeal is directed against the judgment and order dated 8.4.2003 passed by the learned Single Judge in so far as the learned Single Judge has granted interim relief restraining the appellants- Gujarat Electricity Board from recovering the amount of revised supplementary bill from the original petitioner- respondent herein and from disconnecting the power supply of the unit of the original petitioner in connection with the impugned supplementary bill till the final disposal of the petition subject to the condition that the original petitioner shall pay regular bill for the electricity consumed.

3. On the basis of the inspection made by the officers of Gujarat Electricity Board, it was detected that the respondent herein (hereinafter referred to as 'the original petitioner') had committed theft of electricity energy and on that basis, the Gujarat Electricity Board issued supplementary bill for Rs.88,58,365.10. Being aggrieved by the said supplementary bill, the original petitioner preferred appeal before the Appellate Committee constituted under Condition No. 34 of the Conditions and Misc.Charges for Supply of Electrical Energy. During pendency of the appeal, the original petitioner deposited 15% of the impugned bill i.e. sum of Rs.13,28,755/- on 31.5.2002. The Appellate Committee heard the representative of the original petitioner and passed an order dated 7.3.2003 making certain modifications which resulted into revised supplementary bill dated 12.3.2003 issued for a sum of Rs. 56,70,055.14 as against the earlier supplementary bill issued for Rs. 88,58,365.10. Being aggrieved by the above revised supplementary bill, the original petitioner preferred Special Civil Application No. 3067 of 2003. After hearing the learned Counsel appearing for the parties, the learned Single Judge issued Rule and granted interim relief as aforesaid. Against the grant

of interim relief, the Gujarat Electricity Board has filed the present appeal.

4. Mr.A.D.Oza with Mr. Dave, learned Counsel for the appellants- Gujarat Electricity Board have submitted that the learned Single Judge ought not have granted interim relief against disconnection of electricity supply without requiring the original petitioner to pay the entire amount of impugned revised bill and the current electricity charges. He submitted that when the Appellate Committee has already reduced the amount of supplementary bill from Rs. 88,58,365.10 to Rs. 56,70,055/-, no such interim stay should have been granted.

5. On the other hand, Mr. N.D.Nanavati with Ms. Disha Shelat, learned Counsel for the respondent original petitioner have submitted that the learned Single Judge has passed a discretionary order and that the learned Single Judge was inclined to remand the matter to Appellate Committee, but because the learned Counsel for the Gujarat Electricity Board did not agree to such final disposal of the petition, interim order has been passed.

6. Having heard the learned Counsel for the parties, we are of the view that when the Appellate Committee has substantially reduced the amount of supplementary bill from Rs. 88,58,365.10 to Rs. 56,70,055/-, in the facts and circusmtances of the case, the interim protection granted in favour of the original petitioner against disconnection of electricity supply should have been granted subject to the condition that the original petitioner shall pay the amount of revised supplementary bill. However, in view of the economic hardships being pointed out by the learned Counsel for the original petitioner, we are of the view that the interests of justice would be served if we modify the interim order dated 8.4.2003 passed by the learned Single Judge as under:

> There shall be interim relief against disconnection of electricity supply to the unit of the original petitioner (respondent herein) during pendency of Special Civil Application No.3067 of 2003 subject to the following conditions:
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> (i) The original petitioner shall pay and continue to pay the current electricity charges.
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> (ii) The original original petitioner shall pay the balance amount of revised supplementary bill of Rs. 43,41,300.14 in equal monthly instalments of

Rs. 2 lacs each, the first instalment of Rs. 1,41,300.14 shall be paid by 10th August 2003 and the remaining amount of Rs. 42 lacs shall be paid in next 21 equal monthly instalments of Rs. 2 lacs each and such instalments shall be paid on or before the 10th day of every month commencing from 10h Sept.,2003.

(iii) In case the original petitioner commits any default in payment of any bill for the current charges or in respect of any instalment as aforesaid, the interim relief shall cease to operate and the Gujarat Electricity Board shall be at liberty to disconnect the electricity supply.

(iv) The liability, if any, of the unit of the original petitioner for payment of interest or delayed payment charges shall be in accordance with law.

It is directed accordingly.

7. The appeal is accordingly allowed in the aforesaid terms and the interim order passed by the learned Single Judge shall stand substituted by order in the aforesaid terms.

8. Since the LPA is allowed, the Civil Application does not survive and is disposed of accordingly.

(Kshitij R.Vyas,J.)

(M.S.Shah,J.)

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